

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	Chapter 11
	§	
GOLDEN OIL COMPANY,	§	CASE NO.: 03-36974-H2-11
	§	(Chapter 11)
	§	
DEBTOR.	§	

MOTION TO ENFORCE SETTLEMENT

IF YOU WANT A HEARING, YOU MUST REQUEST ONE IN WRITING, AND YOU MUST RESPOND SPECIFICALLY TO EACH PARAGRAPH OF THIS PLEADING. YOU MUST FILE YOUR RESPONSE WITH THE CLERK OF THE BANKRUPTCY COURT WITHIN TWENTY DAYS FROM THE DATE YOU WERE SERVED AND GIVE A COPY TO THE PERSON WHO SENT YOU THE NOTICE; OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF.

IF A PARTY REQUESTS EMERGENCY CONSIDERATION, THE COURT MAY ACT EXPEDITIOUSLY ON THE MATTER. IF THE COURT ALLOWS A SHORTER RESPONSE TIME THAN TWENTY DAYS, YOU MUST RESPOND WITHIN THAT TIME. IF THE COURT SETS AN EMERGENCY HEARING BEFORE THE RESPONSE TIME WILL EXPIRE, ONLY ATTENDANCE AT THE HEARING IS NECESSARY TO PRESERVE YOUR RIGHTS. IF AN EMERGENCY HEARING IS NOT SET, YOU MUST RESPOND BEFORE THE RESPONSE TIME EXPIRES.

NOW COMES Energen Resource Company (“Energen”), by and through its counsel of record, and files its Motion to Enforce Settlement and sets forth the following:

1. This Court has jurisdiction over this case pursuant to 28 U.S.C. § 157, 1334. This case is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

2. Venue of this motion is proper in this district pursuant to 28 U.S.C. § 1409.

3. The Third Amended Disclosure Statement referring to the Third Amended and Restated Joint Point of Reorganization (the “Plan”) was approved by the Court on April 23, 2004. On May 26, 2004, a proposed modification and motion to approve the modification was filed. Thereafter, on May 27, 2004, a proposed amended modification to Plan paragraph 6.13 was filed. *See* Exhibit “A”

4. On May 28, 2004, this Court heard testimony, arguments of counsel and considered the evidence, objections and responses of the parties. Thereafter, on October 6, 2004, the Court resolved certain outstanding claims and entered an Order confirming the Third Amended and Restated Joint Plan of Reorganization, as modified, by the Debtor Golden Oil Company (“Golden”) and Ralph T. McElvenny, Aeropanel Corporation, Inc. and Instrument Specialties Company. This Order, attached hereto as Exhibit “B,” contained approval of the Amended Plan Modification which evidenced the Settlement Agreement between Energen and Golden (“Confirmation Order”).

5. In addition, on October 6, 2004, during the confirmation hearing, certain aspects concerning the implementation of this settlement and getting the documents in place were detailed into the record and agreed to between Energen and Golden.¹ A copy of portions of the October 6, 2004 transcript is attached as Exhibit “C.”

¹ As noted in *In re Paolino*, 78 B.R. 85, 88 (Bankr. E.D. Penn. 1987), a “settlement agreement as read into the record in open court...constitutes a valid, binding and enforceable settlement agreement.” “An agreement to settle a lawsuit, voluntarily entered into, is binding upon the parties, whether or not made in the presence of the court, and even in the absence of a writing.” *Id.* at 89.

6. Thereafter, Energen worked diligently with counsel for Golden and Mr. McElvenny to finalize and execute the documents necessary to perfect the security interests described in the Settlement Agreement, which is made part of the Plan, and also to obtain funding for the plugging and abandonment costs into the escrow account, pursuant to the Escrow Agreement and as more fully set forth in the Settlement Agreement.² Copies of the last documents circulated after various discussions among counsel are attached as Exhibit “D,” along with a covering email detailing these documents dated April 18, 2005.

7. Thereafter, counsel for Energen was notified that Mr. Rothberg’s firm had been removed as counsel with regard to finalizing these agreements and that a new counsel from the State of Oklahoma was retained by Golden. After a series of communications, Energen’s counsel was notified by Golden’s “new counsel” that Mr. McElvenny, himself, was going to address the closing documentation. To date, we have had no communications with Mr. McElvenny concerning the necessary documentation.

8. In addition, on information and belief, certain specifics of the settlement and subsequent agreements have not been performed by Golden and Golden is currently in default under the joint operating agreement which was to be assumed and cured by virtue of the settlement and the performance of the settlement terms.

9. Pursuant to paragraph 46 of the Confirmation Order (Exhibit “B”), “this Court retained jurisdiction (i) to enforce and implement the terms and provisions of the Plan and this Order, all amendments thereto, any waivers, and consents herein provided, and any agreements

² The fact that these ancillary documents remained to be executed does not affect the enforceability of the parties’ settlement, even where there is only an oral agreement between the parties. “The fact that ancillary documents need to be drafted does not prevent an oral agreement from being enforced.” *In re Dragone*, 318 B.R. 33, 35 (Bankr. D. Conn. 2004). Even the Fifth Circuit has noted, applying Texas law, that even in the absence of a written settlement, which is not the case here, an oral pronouncement of a settlement will suffice to make its terms enforceable between the parties. “Under Texas Rule of Civil Procedure 11, no agreement between attorneys or parties touching any suit will be enforced unless it be in writing, signed and filed with the papers as part of the record, **or unless it be made in open court and entered of record.**” *In re Omni Video, Inc.*, 60 F.3d 230, 232 (5th Cir. 1995) (internal quotations omitted; emphasis added).

executed in connection herewith... (iii) to resolve any disputes arising under or related to this Order or the Plan, and (iv) to interpret, implement and enforce the provisions of this Order.”³

WHEREFORE, based on the foregoing, it is requested that this Court hold a hearing and order the following:

1. Golden Oil Company and Mr. Ralph T. McElvenny are required to and shall execute the necessary documentation attached in Exhibit “D” hereto;
2. Golden Oil Company and Mr. Ralph T. McElvenny are ordered to cure all defaults and implement the settlement in accordance with the terms and specifics made part of the settlement in the October 6, 2004 transcript;
3. Golden Oil Company and Mr. Ralph T. McElvenny are ordered to deposit into the Escrow Agreement all funds that have been required under the settlement; and
4. Any further relief to which Energen Resources Corporation is entitled which is just and equitable under the circumstances including attorneys’ fees and costs.

Respectfully submitted,

By: /s/ Philip G. Eisenberg
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Mark A. Chavez
State Bar No. 24036357
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Counsel for Energen Resources Company

³ Further, “[i]t is well settled that a trial court has jurisdiction to enforce a settlement agreement made by litigants in a pending case. The jurisdiction is founded on the strong public policy which favors the settlement of disputes and avoidance of costly and time-consuming litigation.” *In re Paolino*, 78 B.R. at 89.

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**ORDER GRANTING ENERGEN RESOURCE COMPANY'S MOTION TO ENFORCE
SETTLEMENT**

On this date the Court considered Energen Resource Company's Motion to Enforce Settlement ("Motion"). It appears to the Court that said Motion is meritorious and should in all respects be **GRANTED**.

IT IS THEREFORE ORDERED, that, for the reasons set forth in said Motion the Motion is **GRANTED**.

IT IS FURTHER ORDERED, that, within ten (10) days following execution of this order:

1. Golden Oil Company and Mr. Ralph T. McElvenny are required to fully perform the settlement and shall execute the documentation attached to the Motion as Exhibit "D";
2. Golden Oil Company and Mr. Ralph T. McElvenny shall cure all defaults and implement the settlement in accordance with the terms and specifics made part of the settlement in the October 6, 2004 transcript attached to the Motion as Exhibit "C";
3. Golden Oil Company and Mr. Ralph T. McElvenny shall deposit into the Escrow Agreement all funds that have been required under the settlement; and
4. Golden Oil Company and Mr. Ralph T. McElvenny are **ORDERED** to take no actions inconsistent with the terms of this Order and the settlement.

IT IS FURTHER ORDERED that Golden Oil Company and Mr. Ralph T. McElvenny shall pay to Energen Resources Corporation, within ten (10) days of the execution of this Order reasonable attorneys' fees and costs in a total amount of _____ .

SIGNED this _____ day of _____, 2005.

U.S. BANKRUPTCY JUDGE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on June 7, 2005 a true and correct copy of the foregoing instrument was served on all parties listed below via U.S. Mail, facsimile and/or other electronic means.

/s/ Mark A. Chavez

MARK A. CHAVEZ

DEBTOR:

Golden Oil Company
550 Post Oak, S-550
Houston, TX 77027

State of New Mexico
Oil Conservation Division
1000 Rio Brazos Road
Aztek, NM 87410

DEBTOR'S ATTORNEY:

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Nortex Corporation
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Houston, TX 77002

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Farmington, NM 87401

TRUSTEE:

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Office of the U.S. Trustee
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Houston, TX 77002

Amoco Production Company
P.O. Box 841521
Dallas, TX 75284

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New Mexico Taxation and Revenue
Department
Oil and Gas Bureau
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P.O. Box 5374
Santa Fe, NM 87502
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Brown Development
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the Interior
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Denver, CO 80217

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Triple P Well Services
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Cimarron Oilfield Services, Inc.
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